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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 0 4 2009
LIN 07 205 50004

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the arts. The petitioner describes himself as a textile artist, specializing in the "[d]esign of traditional tapestries woven in the Aubusson technique . . . and organization of international art exhibits." The petitioner seeks employment with International Arts & Artists (IA&A), Washington, D.C. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner failed to show that he qualifies for classification as an alien of exceptional ability in the arts, or that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and numerous exhibits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner filed the petition on his own behalf on June 20, 2007. The first issue to consider is whether the petitioner qualifies for classification as an alien of exceptional ability in the arts.

In an introductory statement submitted with the initial filing of the petition, counsel claimed that the petitioner "is known throughout the world as the 'Missionary of Modern Tapestry.' . . . [The petitioner] has more then [*sic*] 100 personal and group exhibitions around Europe and the United States. He . . . lectures on medieval and modern tapestries. . . . His works have been exhibited around the world for more than thirty decades [*sic*]."

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 204.5(k)(3)(ii) set forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below. Qualifications possessed by all or most workers in a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every qualified physician has a college degree and a license or certification, but it defies logic to claim that every physician therefore shows "exceptional" traits.

Counsel initially claimed that the petitioner has met five of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), listed below. On December 26, 2007, the director issued a request for evidence (RFE), instructing the petitioner to submit further evidence to satisfy the specific regulatory standards. Counsel's statement in response to the RFE directly addressed only one of the six criteria (relating to experience); the remainder of counsel's statement consisted of vague assertions that the petitioner's experience and reputation establish his exceptional ability in the arts. Similarly, as we shall discuss further, counsel's arguments on appeal address only two of the regulatory standards, relying on other factors to support the claim of exceptional ability.

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(A)

The petitioner claims to have studied art at various institutions in Germany and France between 1957 and 1965. The petitioner did not submit the "official academic record[s]" that the regulation specifically requires.

In an academic evaluation, [redacted] of Educated Choices LLC stated that the petitioner's "progressive professional training and employment experience in Design" is "the equivalent of a U.S. Bachelor's degree in Design." An exhibit list submitted with the petition refers to a second evaluation by [redacted], arriving at the same conclusion, but the second evaluation is not in the record. More importantly, a third-party educational evaluation is not an official academic record, and work experience is covered by a separate criterion, discussed below.

In the December 26, 2007 RFE, the director instructed the petitioner to submit, among other things, evidence of any degrees the petitioner might hold. The petitioner's response to the notice did not include any academic records. Counsel, in the accompanying letter, did not claim that the petitioner holds any postsecondary academic degrees.

The director denied the petition on October 8, 2008. In the denial notice, the director found "[t]he petitioner has not established that he holds any formal post-secondary education."

On appeal, counsel states that the petitioner "need not possess an advanced degree, or its equivalent, in order to qualify for this classification." Nevertheless, the petitioner must satisfy at least three of the criteria listed at 8 C.F.R. § 204.5(k)(3)(ii). In the initial filing, counsel claimed that the petitioner satisfied 8 C.F.R. § 204.5(k)(3)(ii)(A), citing, as evidence, the petitioner's own *curriculum vitae* and an educational evaluation. It is clear that, on appeal, counsel makes no attempt to pursue this claim, instead simply observing that an academic degree is not required. We agree with the director's finding that the petitioner has not submitted academic records to establish that he holds degrees or comparable qualifications in his area of expertise.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.* 8 C.F.R. § 204.5(k)(3)(ii)(B)

The petitioner submits copies of promotional materials, newspaper articles, and letters relating to his lectures, his work as a curator of showings of other artists' work, and exhibitions of his own textile art. Some of the materials date back to the 1970s.

In his evaluation, [redacted] stated that the petitioner "has documented 24 years 10 months of progressive professional training and employment experience in Design." did not identify what documentary evidence, if any, he reviewed when performing the evaluation.

In the December 26, 2007 RFE, the director requested employer letters as described in the language of the regulation. In response, counsel asserted that the petitioner has "more than ten years of full-time employment in his field of endeavor," but identified no evidence to support this claim. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submitted a letter from [redacted] President of IA&A. [redacted] stated that IA&A had employed the petitioner "in the position of Exhibition Development Advisor . . . since 2006." The petitioner, on Form ETA-750B, had indicated that IA&A hired him in April 2005. USCIS records and tax documentation in the record indicates that IA&A first employed the petitioner in 2005.

In the denial notice, the director noted that the credential evaluation "states that the petitioner has 24 years and 10 months of progressive professional training and employment experience." The director found, however, that this evaluation is not first-hand evidence of past employment. On appeal, counsel argues: "The record establishes that prior to the filing of this petition [the petitioner] had worked in his field of expertise for more than 3 decades."

Apart from the recent work for arts organizations for which the petitioner has obtained nonimmigrant visas, the nature of the petitioner's work, both as an artist and as a consultant and lecturer, does not appear to be that of a typical "nine to five" occupation with a steady employer.

Under these conditions, the petitioner could not obtain letters from former employers to attest to his experience. Under 8 C.F.R. § 204.5(k)(3)(iii), if the regulatory standards at 8 C.F.R. § 204.5(k)(3)(ii) do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. The petitioner has submitted extensive evidence of tapestry work, exhibitions, lectures, and other efforts spanning several decades. We find that these materials are comparable evidence of more than ten years of full-time experience in tapestry art. The petitioner therefore satisfies this particular regulatory criterion.

> *Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(D)

On the Form I-140 petition, the petitioner stated that he intends to work at IA&A, with a salary of $78,208 per year. The petitioner did not provide information about the usual salary range for those who organize and initiate art shows, or about the usual price ranges for tapestries of comparable size and materials to those he makes. Also, the petitioner did not submit documents showing that he has ever earned $78,208 per year.

The petitioner submitted evidence to show that he sold a 5' x 6½' tapestry to a buyer in Louisiana for $8,000 in November 2004. A March 2007 letter confirmed the sale of a 5' x 3½' tapestry to a buyer in Germany for €6,000, which the petitioner indicated was approximately $8,000. Counsel claimed that these amounts were "significantly high . . . in relation to others in the field," but the record contains insufficient evidence about tapestry prices to permit a meaningful comparison.

The only other initial exhibit to mention the petitioner's compensation is a letter from [redacted], Resident Associate Study Tours Manager for the Smithsonian Associates, who stated that the petitioner received "a modest honorarium" "to lead tours . . . of the tapestries exhibited at the National Gallery of Art."

The director, in the RFE, requested documentation of the petitioner's past and present compensation. In response, the petitioner submitted copies of Internal Revenue Service Form W-2 Wage and Tax Statements, showing that IA&A paid him $24,000.08 in 2005, $23,815.48 in 2006 and $22,800.18 in 2007 – indicating a downward trend in his salary from IA&A. This is more than $55,000 less than the annual salary that the petitioner claimed on Form I-140. [redacted] did not indicate that IA&A intended to pay the petitioner $78,208 per year in the future. Rather, he stated that the petitioner "receives a yearly salary of $22,800. This rate is reflective of someone of his talent and position at a non-for-profit [*sic*] organization."[1]

A printout from the online auction site http://www.artnet.com shows that one of the petitioner's works sold in a November 2007 auction, but the printout does not list the price, because that information is restricted to subscribers to the site.

[1] On the Form I-129 petition (receipt number EAC 05 035 52678) through which IA&A obtained H-1B nonimmigrant status for the petitioner in 2005, IA&A indicated that the petitioner's annual salary would be $24,000.

In a September 8, 2008 letter to the petitioner, [redacted] indicated that he paid the petitioner a $3,000 "[c]onsulting fee" for helping the Dow Museum obtain the tapestry *Lunaris* by Jean Lurçat. The record does not disclose the usual consulting fee paid in such transactions, nor does the record contain certified tax returns or other documentary evidence to establish the petitioner's total annual compensation. Instead, the available evidence regarding the petitioner's compensation is fragmentary, and there is no comparative evidence at all that would allow us to determine whether the petitioner's rate of pay demonstrates exceptional ability.

In denying the petition, the director stated: "The petitioner has submitted evidence of his successful sale of tapestries. However, he has not established that significant sales demonstrate his exceptional ability as a tapestry artist." On appeal, counsel does not discuss the petitioner's compensation. We agree with the director's finding, uncontested on appeal, that the petitioner has not established that his earnings demonstrate exceptional ability.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E)

Letters from the American Tapestry Alliance and the American Goethe Society of Washington, D.C., confirm the petitioner's membership in those organizations. The record, however, contains no other information about those entities. Therefore, the petitioner has not shown that membership is a hallmark of exceptional ability in the arts, or even that the organizations qualify as professional associations. If one may join these organizations simply by paying a fee, or if membership requirements are independent of one's occupation or achievements, then there is no reasonable support for the claim that the memberships establish exceptional ability in the arts.

The director, in the December 2007 RFE, requested evidence of the membership requirements for the organizations to which the petitioner belongs. In response, the petitioner submitted materials relating to the American Tapestry Alliance and Gloria F. Ross Center for Tapestry Studies. These materials confirm the petitioner's membership in the organizations, but they do not show the organizations' membership requirements. If membership requirements are open or minimal, then nothing about holding such a membership demonstrates unusual expertise or exceptional ability.

In the denial notice, the director stated: "The petitioner has established that he is a member of the American Tapestry Alliance and the American Goethe Society." The director did not state whether or not these memberships qualify as evidence of exceptional ability. Counsel, on appeal, does not address the subject of the petitioner's memberships. We find that the petitioner has not satisfied the requirements of 8 C.F.R. § 204.5(k)(3)(ii)(E).

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F)

In the initial submission, counsel cited letters from various witnesses who referred to the petitioner as an expert in his field, and asserted that these letters constitute recognition for the petitioner's

achievements and contributions. Director of the Käthe Kollwitz Museum, Berlin, Germany, stated:

> [The petitioner] is very well known as an organizer and coordinator of art exhibitions, a lecturer on medieval tapestries and as a creator of original art works in this interesting genre. . . .
>
> While staying in Berlin, [the petitioner] presented a lecture in the field of his expertise: "The Cluny Tapestries in Paris – The Lady with the Unicorn." Both the exhibition of his works and his informative lecture were well received here.

[redacted], President and CEO of the Morris and Gwendolyn Cafritz Foundation, stated:

> Several years ago, when we learned that [the petitioner] had been a student of Jean Lurçat (1892-1966) and was an expert on modern Aubusson tapestries, we asked him to appraise the two large Lurçat tapestries in our possession: "Le printemps" ("Spring") and "L-automne" ("Autumn").
>
> Due to his knowledge in this specific field, we were pleased to receive his evaluation of the works. We would recommend his expertise without hesitation.

We previously discussed the letter from [redacted] of the Smithsonian Associates. [redacted] stated that the petitioner's "tours were popular and well received. His expertise is extensive and his skill and generosity in sharing his knowledge provided an entrancing learning experience for those on the tours."

[redacted] of the Kurpfälzisches Museum, Heidelberg, Germany, stated:

> As [the petitioner] is known to us as a skillful and resourceful organizer of textile art exhibitions . . . we can highly recommend him for his experience in this field to any other art institution whom he might want to contact. Needless to say that [the petitioner] also has had numerous successful showings of his own work as a tapestry designer throughout Europe. . . . Many experts in his area of expertise refer to [the petitioner] as (quote) "the motor in the field of Contemporary German Textile Art," as well as (quote) "a missionary for tapestry."

did not identify the sources of the quotations provided.

The above letters do not constitute formal recognition for achievements or contributions. Rather, they represent fairly general letters of recommendation and appreciation.

The director, in the RFE, requested additional evidence regarding the petitioner's recognition for his achievements and contributions. The director indicated that witness letters "should be corroborated

by documentary evidence in the record." In response, the petitioner submitted additional letters. We will discuss these letters in the context of the national interest waiver, later in this decision.

The director, in denying the petition, acknowledged that the petitioner "has lead [*sic*] tours" and that he "is well respected by his peers," but that the petitioner had not met the regulatory requirements to establish exceptional ability in the arts.

Counsel, on appeal, maintains that the petitioner has achieved "significant artistic recognition for his achievements and contributions to his field of endeavor by peers, governmental entities and professional and business organizations." To support this claim, counsel cites "Exhibits 2.E-F; see also Exhibit 3.H.1-4." Appellate exhibit 2 is not divided into subsections; the exhibit consists of photographs of the petitioner's work. Exhibit 3 is divided into sections A and B, both of which consist of background information about tapestry weaving. In the petitioner's initial exhibit list, exhibit 2.E refers to an educational evaluation that appears to be missing from the record; exhibits 2.F and 3.H.1-4 are witness letters. In any event, most of the evidence submitted on appeal is redundant, consisting of copies of previously submitted letters and documents. Counsel refers to several previously submitted exhibits as "new" or "additional." The only clearly new exhibits on appeal are a printout from a bookseller's web site regarding one of the petitioner's books, and materials relating to the November 2008 introduction of a new IA&A traveling exhibition.

The letters in the record demonstrate that witnesses whom the petitioner has selected express support for the petition, and consider the petitioner to be an accomplished artist and educator in his field. We hold that the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F) refers to formal, institutional recognition, rather than simply the petitioner's ability to locate favorable witnesses to write letters on his behalf. Therefore, we find that the petitioner has not submitted evidence of recognition under the cited regulation.

The remainder of counsel's appeal, relating to the exceptional ability issue, consists of general arguments and assertions drawn from outside the regulatory standards at 8 C.F.R. § 204.5(k)(3)(ii). Many of these arguments (such as artistic showcases, media coverage and judging the work of others) derive from unrelated regulations at 8 C.F.R. § 204.5(h)(3), which pertain to aliens of extraordinary ability – a separate classification established by section 203(b)(1)(A) of the Act. The petitioner did, in fact, file a separate petition seeking classification as an alien of extraordinary ability in the arts. That petition (receipt number LIN 07 205 50006, filed June 20, 2007) is still pending. An initial finding relating to that petition is the responsibility of the director, not the AAO, and therefore we will offer no opinion about the merits of that still-pending petition. The petitioner appears to have submitted both petitions with a single packet of evidence, intended to be shared between the two petitions.

While 8 C.F.R. § 204.5(k)(3)(iii) permits the submission of comparable evidence in lieu of the specified criteria at 8 C.F.R. § 204.5(k)(3)(ii), this clause applies only if those regulatory standards do not readily apply to the beneficiary's occupation. The petitioner's inability to meet a criterion that readily applies to his occupation does not trigger the "comparable evidence" clause.

For the reasons provided above, we agree with the director that the petitioner has not established that he qualifies for classification as an alien of exceptional ability in the arts. This is not, we stress, a finding that the petitioner cannot qualify for that classification. Rather, it is a finding that the evidence submitted is not sufficient to meet the burden of proof. It is possible that further qualifying evidence exists outside the record, although this is only speculation. The evidence that the petitioner has submitted for consideration, however, is not sufficient to meet the evidentiary requirements set forth in the cited regulations.

The second and final issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now USCIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

Because the petitioner has not established eligibility for the underlying visa classification, he cannot qualify for a waiver that is available only to aliens in that classification. Nevertheless, in the interest of thorough consideration of the record, we will discuss the petitioner's waiver application here.

In an introductory statement, counsel claimed:

> [The petitioner] is known throughout the world as the "Missionary of Modern Tapestry." The last student of the great Jean Lurcat, the father of the 1940s Aubusson revival in France, [the petitioner] inherited the name of the studio as a legacy. [The petitioner] is recognized for introducing this technique to German weavers in 1966.

The passive-voice claims that the petitioner "is known" and "is recognized" for his work begs the question of who knows and recognizes the petitioner in this way.

Counsel asserted: "The substantial intrinsic merit of Textile Arts is immediately apparent. Museums around the country seek to bring to their patrons this ancient and magnificent art form. In addition to crafting new pieces, [the petitioner] has, for decades, advocated and worked to disseminate this art form around the country and the world." We agree with counsel that the petitioner's occupation meets the substantial intrinsic merit test. The director acknowledged as much in the notice of decision. The director also found that the petitioner's educational efforts are national in scope, and we will not disturb this finding.

The remaining test is whether the petitioner presents a benefit to the United States that warrants the special benefit of a waiver. Counsel stated: "With [the petitioner's] impressive background in Textile Arts work and proven track record of success, it is obvious that he has attained a level of expertise well above others in his field." This conclusion would be "obvious" only if the petitioner had submitted evidence about others in his field, sufficient to allow a meaningful comparison. The petitioner has not done so. Instead, the petitioner has catalogued his own accomplishments and declared them to be well above those of others in the field.

The petitioner observed that, under H-1B nonimmigrant status, he can work for only one employer at a time, whereas as a permanent resident he could "work for more than one company or art institution as a consultant" while also being "self employed as a Fine Arts Dealer." The petitioner has stated his personal goals, but he must show how it is not only in his own interest, but in the national interest, for him to become a permanent resident of the United States.

Counsel cited "testimonials from some of the world's top experts." We have already discussed some witness letters above; we will consider additional letters here. [redacted] stated that the petitioner "provides IA&A with inroads into public and private collections that have been previously unavailable to us. His connections in the art world in Europe are invaluable to us and have significantly enhanced the exhibitions we are able to coordinate for display at museums around the United States and abroad."

[redacted] stated:

> I first met [the petitioner] in 1979 while I was working at the National Gallery of Art in Washington, D.C. as assistant tapestry conservator to [redacted]. Mr. [redacted] requested [the petitioner's] assistance in the evaluation of a [redacted] [*sic*] tapestry being considered as a permanent addition to the National Gallery of Art's 20th century collection. [The petitioner] was vastly knowledgeable of the French artist's work having studied and worked with the artist.
>
> I find [the petitioner's] extensive expertise in contemporary and historic tapestries a major asset. [The petitioner's] vast knowledge and international network has enabled me to assist my clients with accurate information when the authenticity and current market value of a tapestry is needed.
>
> There are few experts in the United States that match [the petitioner's] knowledge of tapestry. I will continue to rely on [the petitioner] as a major resource and look forward to a long professional association.

[redacted], a tapestry artist in Bethesda, Maryland, discussed the overall merits of tapestry art and asserted that the petitioner "is the main source of knowledge and skill and encouragement to me and to other artists in this unique field."

[redacted] a tapestry artist based in Port Townsend, Washington, stated: "Very few who write and curate have been an actual student and master in the field. Having worked and knowing all these techniques only add to the information [the petitioner] can pass on. I find he therefore becomes a treasure for the United States of America."

Tapestry artist [redacted] of New York, New York, who created some works later exhibited by the petitioner, stated:

> As a dealer and collector of antique and modern tapestries, I have had the privilege to know and work with [the petitioner] in different capacities and on many projects throughout the years. He is not only an expert in this field, with years of scholarly study, but a respected artist himself. . . .

Through [the petitioner's] efforts to educate, whether through his exhibitions or his books, the art of tapestry is no longer overlooked in the field of fine art.

[redacted], Development Associate at the Bass Museum of Art in Miami Beach, Florida, stated:

I consider [the petitioner] to be a master of the art of tapestry and a wonderful promoter of tapestry arts. In the fall of 2006, the Bass Museum of Art secured a traveling exhibition entitled ***Tapestries: Picasso, Matisse, Calder and other Great Twentieth Century Modernists***. As curator of the show, [the petitioner] was invited to do several gallery talks, discussing the spectacular woven works based on the twentieth century masters named above. His presentation was detailed, comprehensive and, above all, enlightening. Given that he had been an assistant to Jean Lurçat in the 1960's, he was able to offer first-hand insight into the world of tapestry making. His audience was entranced with his knowledge and enthusiasm for his subject.

Educator at Appleton Museum of Art at Central Florida Community College, Ocala, stated:

[The petitioner] as an artist revitalizes the ancient art of tapestry weaving with his incredible talent and skill. . . .

That he is a consummate artist is secondary to his value to America as an educator, museum and gallery exhibit developer and curator. He has frequently lectured at notable institutions such as the National Gallery, George Washington and the Smithsonian. . . . He is an expert on textile art from the late Middle Ages to the Renaissance in the Franco-Flemish territories and has provided valuable appraisals of tapestries to various groups as well – probably the only one living in the United States today.

I experienced the phenomenon that is [the petitioner] first-hand when working with him to bring "Tapestries: Picasso, Calder, Matisse and Other Great Twentieth Century Modernists," an exhibit that he curated, to the Appleton Museum. . . . I invited him to lecture our guests and found that he was most interested (and able) in targeting our particular population and bringing "The High Art of Tapestry" (the title of his lecture) down to the ranks of common man who knew little to nothing about this ancient art/craft. . . .

[The petitioner] is eager to share his wealth of knowledge and has proven his value in innumerable venues in the United States.

[redacted], President of Contemporary Tapestry Weaving, Royal Oak, Maryland, stated:

From my perspective as a tapestry artist and gallery owner, I regard [the petitioner] as the single most powerful influence behind the revival in tapestry art that has occurred

> within the United States over the past decade. . . . [H]e has breathed new life into the artistic scene and generated a resurgence of public interest in the art of tapestry.
>
> Over the years, I have followed his mission of raising public awareness and of creating an environment for the growth of a new generation of tapestry artists in the U.S.A.

Artistic Director of the Moon Rain Centre for Tapestry Arts in Canada, stated: "it would represent an impossible and unthinkable loss if [the petitioner] were not permitted to continue his work for tapestry and for tapestry artists."

of Virginia Commonwealth University, Richmond, stated that "tapestry as an art form, is undervalued. [The petitioner] is trying to give new life to tapestry by educating the art community and the broader community that has an interest in the arts." [redacted] added that the petitioner "is currently working on a book about tapestry. . . . I believe that the book he is getting ready to publish will be important. I must disclose that he has included my work in the book. This should be a book that will be acquired by libraries and art enthusiasts."

With respect to the aforementioned book, the record contains a photocopied draft manuscript of *To Weave Or Not To Weave*, partly typed and partly handwritten on lined paper. There is no evidence that this book has been published or accepted for publication; the petitioner stated that he expected the book "to be published by [the] end of 2008." The record documents the publication of exhibition catalogues by the petitioner. The record contains a listing from http://www.amazon.com for the petitioner's 2006 book *Tapestries: The Great Twentieth Century Modernists*, published by the Trust for Museum Exhibitions (which was the petitioner's employer from 2002 to 2005). The record also refers to a 1994 exhibition catalog.

In denying the petition on October 8, 2008, the director concluded that the petition rests largely "on the lack of skilled artisans providing similar benefit." The director noted that worker shortages are addressed by the labor certification process, and therefore such a shortage is not a basis for waiving that process. *See Matter of New York State Dept. of Transportation* at 218. On appeal, counsel quoted from numerous witness letters and stated that the petitioner "has demonstrated that his past, current and prospective benefit to the advancement of the arts, particularly the art of tapestry, in the United States is substantially greater than a minimally qualified U.S. worker."

The submissions discussed above show that the petitioner is well-regarded by many in the tapestry art community, particularly individuals who have worked with the petitioner or whose works have been part of exhibits organized by the petitioner. The record, however, contains little concrete evidence to show that the petitioner has been especially influential either as an artist or as an educator. The record, for instance, does not show that art schools have incorporated the petitioner's writings on tapestry into their curricula, or that independent art critics have consistently praised the petitioner's original art works. The published materials regarding the petitioner's work tend to be promotional in nature, announcing upcoming shows and presentations. The record indicates that the petitioner has been a prolific artist, but the record does not show that the petitioner's works appear in public with any

frequency except in shows that the petitioner himself has organized. Witnesses have credited the petitioner with a resurgence in interest in tapestry, but the record does not document the extent of this resurgence, or the degree to which the petitioner is responsible for it.

The record establishes that the petitioner is an experienced scholar of tapestry art, as well as a prolific and dedicated artist in his own right. These facts, however, do not establish exceptional ability as the regulations define that term, nor do they meet the higher threshold of the national interest waiver. The record is not without exaggeration, such as counsel's assertion that, by serving as a temporary tour guide, the petitioner played a leading and critical role for the Smithsonian Institution. Such hyperbolic statements diminish the credibility of counsel's other assertions.

Section 203(b)(2)(B)(i) of the Act clearly states that aliens of exceptional ability in the arts can qualify for the national interest waiver. The art of tapestry, while perhaps more obscure than other fine arts such as painting and music, falls within this category. At the same time, an alien seeking the waiver must meet the evidentiary requirements of the regulations and case law. We find that the petitioner's evidence, while copious in quantity, fails to satisfy those requirements.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.